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硕 士 学 位 论 文

我国公安机关鉴定人出庭作证问题研究

Study on China's Appearance in Court of Police Judicial
Authenticators

任 媛

指导教师姓名: 张 薇 薇 副 教 授

专 业 名 称: 法 律 硕 士

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内 容 摘 要

在我国目前的鉴定体制下,大部分的鉴定意见是由公安机关侦查部门作出的。公安机关鉴定人因同时具有鉴定人员与侦查人员的双重身份,其出庭作证问题具有相当的复杂性。由于我国鉴定人体制自身的缺陷、相关法律制度不健全以及公安机关鉴定人能力和资源有限等方面的原因,使得包括公安机关鉴定人在内的鉴定人出庭作证制度未能得到有效落实,鉴定人不出庭作证依然为常态。公安机关鉴定人作为鉴定人中的特殊群体,其出庭作证显然对实现鉴定意见的法律价值意义重大。因此,笔者以公安机关鉴定人为研究对象,从厘清公安机关鉴定人的概念、身份和地位入手,结合我国鉴定人出庭作证率低的现状,对我国公安机关鉴定人出庭质证环节面临的主要问题及我国鉴定人出庭作证制度的缺陷等问题进行深入分析,同时借鉴两大法系鉴定人出庭作证制度中的有益经验,提出从完善鉴定人出庭作证的法律规定、加强法官对鉴定意见的审查、完善公安机关鉴定组织机构建设、提高公安机关鉴定人自身素质几方面来规范化构建我国鉴定人出庭作证制度,以推动鉴定人出庭作证制度的落实,强化对鉴定意见的审查,从而实现程序公正与实体公正的双重价值。

关键词: 公安机关鉴定人; 出庭作证; 鉴定意见

ABSTRACT

In present judicial expertise system of China, most forensic expertise assessments are made by the investigation department of the police. The police judicial authenticators serving both as judicial authenticators and investigators present great complexity on court witness. Due to the deficiency of China's judicial authenticator system, systematical imperfection of law and limited ability and sources of police judicial authenticators, very little has been achieved in the implementation of the system of China's appearance in court of police judicial authenticators and, furthermore, judicial expertise authenticators are frequently not appearing in court. As a special group of judicial authenticators, police judicial authenticators' appearance in court is legally essential to forensic expertise assessments. Therefore, taking police judicial authenticators as subject of study, by reconceptualizing the concept, identity and status and of police judicial authenticators, according to the present status of low ratio of judicial authenticators' appearance in court, the author closely analyzed the obstacles to police judicial authenticators' appearance in court and the defect of China's system of judicial authenticators' appearance in court. Meanwhile, using experience of appearance in court system from the two law systems, the author proposed standardized construction of the system of appearance of Police judicial authenticators in court in four aspects-- consummation of the law of judicial authenticators' appearance in court, tighten judges' censor of forensic expertise assessment, perfection of the organizational construction of police judicial authentication department, improvement of quality of police judicial authenticators. As a result, by the implement of the system of appearance of judicial authenticators in court and reinforcement of the censor of forensic expertise assessment, the double value of process fairness and entity fairness can be achieved.

Key words: Police judicial authenticator; Appearance in court; Forensic expertise assessment

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